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Rights of Women and Children with Disabilities under the Rights of Persons with Disability Act 2016

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In today's world, even after several positive movements for the rights of persons with disabilities, they still have to face unfair conditions including, stigma, discrimination, poverty, exclusion from education and employment, and not to mention barriers faced in the health system as well. Women and children with disabilities experience twice the amount of discrimination in society, which places them at higher risk of gender-based violence, sexual abuse, neglect, maltreatment, and exploitation. The researcher through this paper seeks to analyze the issues being faced by persons with disabilities, emphasizing women and children with disabilities, the disproportionate impact of gender and disability on women, and initiatives by which these problems can be resolved concerning the provisions of The Rights of Persons with Disabilities Act, of 2016. This paper will also deal with the United Nations Convention on persons with disabilities and the shift from the PwD Act of 1995¹ to the RPWD Act of 2016.²

Keywords: *rpwd, disability law, women, children, rights.*

¹ Persons with Disabilities Act 1995

² Rights of Persons with Disabilities Act 2016

INTRODUCTION

India is a signatory to the UNCRPD³, having approved it on October 1, 2007. The implementation of the UNCRPD rules in India became required, and the RPWD Act was adopted by the Parliament of India in the sixty-seventh year of the republic. To comply with the UNCRPD, the Indian government started the process of creating a new law in 2010 to replace the Persons with Disabilities Act of 1995. Both houses of Parliament approved the Rights of Persons with Disabilities Act⁴ in 2016 following extensive debate. It was announced on December 28, 2016 and took effect on April 19, 2017 following presidential approval.

With the 2016 Act, the perception of disability has changed from one of charity to one of human rights. The main objective of the 2016 Act is to strengthen the autonomy and inherent dignity of people with disabilities (PWDs). It emphasizes non-discrimination, full and effective participation in society, acceptance of differences and disabilities as a component of human diversity, equality of opportunity, accessibility, equality between men and women, respect for children with disabilities developing capacities, and respect for children with disabilities right to maintain their identities.

Disability is a terminology that the Act defines as being dynamic and ever-changing. From seven to twenty-one disabilities are now recognized, including previously largely ignored conditions like mental illness, autism spectrum disorder, cerebral palsy, muscular dystrophy, chronic neurological diseases, speech and language impairment, thalassemia, hemophilia, sickle cell disease, Parkinson's disease. This Act is meant to revolutionize the game, but for the previous four years, its implementation has largely been on paper, with variations between states. This essay's objectives are to review the 2016 Act and look at some of the major issues that have developed as a result of its implementation.⁵

³ Convention on the Rights of Persons with Disabilities 2006

⁴ Rights of Persons with Disabilities Act 2016

⁵ Arnab Bose, 'A Review of the Rights of Persons with Disabilities Act 2016' (RGICS, 2021)

<<https://www.rgics.org/wp-content/uploads/RPWD-Act-Review-Paper.pdf>> accessed 04 February 2023

NEED AND SIGNIFICANCE TO STUDY RPWD ACT

Persons with Disabilities are being uplifted as a result of this initiative. This act protects the rights of people with disabilities in all aspects of their lives, including social interaction, education, and employment. The investigator reviewed the provisions for enhancing the capacity of people with impairments in this investigation. Because it is new legislation, fewer studies have been undertaken on it, and no research has been conducted concerning the capacity enhancement measures in this act for women and children with disabilities. This act is an essential step forward for the development of people with disabilities, and the Government of India has committed to examining such a new act about capacity improvement provisions for women and children with disabilities.

ANALYSIS OF WOMEN WITH DISABILITIES IN INDIA

Women and girls with disabilities account for 44% of the total disability population in India. While equal access to rights and services for people with disabilities remains a struggle in India, it is an open secret that women with disabilities have to face more exclusion in society as compared to others which hinder their enjoyment of rights. Females with disability account for 43% of children with impairments aged 5 to 19 who go to schools and colleges. According to the 2011 Census⁶, women with disabilities made up approximately 54% of India's "illiterate" population with disability. Only 23% of women with disabilities work, while 47% of men with disabilities do. Even the 23% working class of women with disabilities face a lot of obstacles in their day-to-day life.⁷

Despite the disproportionate impact of gender and disability on women, they received no legislative consideration until the Rights of Persons with Disabilities Act of 2016 was passed. The previous Act did not mention women with disabilities. The National Policy of 2006 for the PwD raised concern about females with disabilities' vulnerability to exploitation and abuse and

⁶ Social Statistics Division, Ministry of Statistics and Programme Implementation, *Disabled Persons in India - A Statistical Profile 2016* (2017)

⁷ Swagata Raha & Shampa Sengupta, 'Rights of women with disabilities under Indian legislations' (2018) Manupatra <<http://docs.manupatra.in/newsline/articles/Upload/7102F404-0902-4EEC-BA55-F8EFC25DA6D4.pdf>> accessed 04 February 2023

advocated educational programs, jobs, rehabilitation services, housing assistance, and financial assistance for child care. All these clauses, however, most of it remained on paper and there was hardly any proper implementation. The RPwD Act is an omnibus piece of legislation that addresses violence and discrimination as well as other rights and establishes a monitoring authority and a Special Court to try crimes against people with disabilities.", Concerning the scope of WWDs' rights, the RPD Act includes specific sections on WWDs as well as allusions to women or gender in provisions on equality, social security, healthcare, and offenses against PWDs.

CASE LAWS

Jeeja Ghosh v Union of India: A disability rights activist Jeeja Ghosh who herself has a disability called cerebral palsy traveling from the SpiceJet airlines from Kolkata to Goa, was deboarded by the employees of SpiceJet from a flight stating she is unfit to travel on the flight due to her disability even after she informed the flight crew members that she needed to reach Goa for a very important conference. The Hon'ble Court found that Spice-Jet handled the situation in a very insensitive manner and violated the Aircraft rules of 1937 and CAR, 2008. Due to this unfortunate experience of unreasonable discrimination caused to Ms. Ghosh. The Apex Court awarded Rs. 10L as damages to her.⁸

Suchita Srivastava and Anr v Chandigarh Administration: The Supreme Court, where an orphan female suffering from the disability of mental retardation, got pregnant as a result of rape. The High Court without the woman's consent decided, that the pregnancy should be aborted under Section 3 of the Medical Termination of Pregnancy Act, 1971 because she could not take care of a child and did not have a guardian to look after her. The Supreme Court stated that taking away a woman's right to choose her own body would be an infringement on her right to privacy.⁹

⁸ *Jeeja Ghosh v Union of India* (2016) 7 SCC 761

⁹ *Suchita Srivastava and Anr v Chandigarh Administration* (2009) 9 SCC 1

Patan Jamal Vali v State of Andhra Pradesh: A very crucial case where Patan Jamal was convicted of rape of a disabled woman under the IPC and SC & ST Act. In this case, the court stated that women with disabilities are in general a soft target and easy victims for the commission of sexual violence. As a result, the accused was sentenced to life imprisonment. If women, in general, are oppressed and feel unsafe on our streets, not because of a lack of street lighting or safety apps, but because of the culture of sexism and misogyny then what about women with disabilities? This case is a prime example of why women with disabilities need special provisions to ensure their rights.¹⁰

RIGHT TO EQUALITY OF WOMEN WITH DISABILITY

The RPwD Act's Preamble refers to eight general principles outlined in Article 3¹¹ of the UNCRPD that are critical to fully realizing the rights of women and girls with disabilities to equality and non-discrimination. Section 3¹² protects the equality of all people and prohibits discrimination against people with disabilities. The competent authority must *'ensure that persons with disabilities have the same right to equality, a dignified existence, and respect for his or her integrity as others.'*¹³ The RPD Act eliminates androgynous words and, a first only recognizes male and female binaries when using the pronoun his or her.

PWDs have the same legal ability as everyone else, according to Section 13(2)¹⁴ as well as the right to equal recognition everywhere as any other person under the law. Section 20(1)¹⁵ forbids employment discrimination in government organizations. However, depending on the type of activity being done, the government has the right to exclude a company from this prohibition. Government workplaces should be barrier-free and inclusive, with appropriate accommodations available to employees with disabilities. If a person becomes disabled while serving, their rank cannot be reduced or they cannot be discharged.

¹⁰ *Patan Jamal Vali v State of Andhra Pradesh* (2021) LL SC 231 (India)

¹¹ United Nations Convention on the Rights of Persons with Disabilities 2006, art 3

¹² Rights of Persons with Disabilities Act 2016, s 3

¹³ Rights of Persons with Disabilities Act 2016, s 3(1)

¹⁴ Rights of Persons with Disabilities Act 2016, s 13(2)

¹⁵ Rights of Persons with Disabilities Act 2016, s 20(1)

ANALYSIS OF SECTION 4 OF RPWD ACT 2016

Section 4¹⁶ talks about the upliftment of women and children with disabilities, giving them equal opportunities as others and putting them on the same pedestal as all others. The provisions of section 4(1)¹⁷ talk about the appropriate measures to be taken by the local authorities towards ensuring that women and children with disabilities enjoy the rights given to them equally with others. The provisions of section 4(2)¹⁸ only apply to children with disabilities where it is the responsibility of the local authorities to ensure they get the right to freely and openly express on all matters that are affecting them in any manner and also provide them with the right support keeping in view their disability and age.¹⁹

ANALYSIS OF EDUCATION PROVISIONS FOR CHILDREN WITH DISABILITIES

To bridge the literacy gap of persons with disabilities the government must ensure that children with disabilities go to schools and colleges and receive a quality education so that even they in the future eventually can add value to the nation and become able leaders. The notion of considering persons with disability as a burden or a liability will only fade if the youth get the right education and guidance from the start to stand up for themselves. The funded Educational institutions must strive to provide an inclusive education and atmosphere for persons with disabilities and involve them in all kinds of recreational activities, sports, talent hunts, and other such events. Accommodation is a duty that should be offered as per the student's specific needs, facilities must be provided for the early detection of certain learning difficulties and implement appropriate methods to overcome these disabilities. It is also the responsibility of the local authorities to take adequate measures to promote, safeguard, and assure the participation of people with disabilities in adult education and continuing education programs on par with people without disabilities. To understand the needs and requirements of children with disabilities, a survey should be carried out regularly. The local government will carry out this in various universities and schools. It is important to train and hire more disabled teachers who

¹⁶ Rights of Persons with Disabilities Act 2016, s 4

¹⁷ Rights of Persons with Disabilities Act 2016, s 4(1)

¹⁸ Rights of Persons with Disabilities Act 2016, s 4(2)

¹⁹ Rights of Persons with Disabilities Act 2016, s 4

are proficient in Braille and sign language as well as teachers who have experience working with students who have intellectual disabilities.

This will inspire kids with disabilities by making them feel included. All employees and professionals should be in favor of inclusive education at all levels. To address the communication needs of kids with varied disabilities, there should be enough resource centers, and different forms of communication should be encouraged. Students with cognitive disabilities should be given free access to books, educational resources, and other aids. The curriculum and evaluation system should be modified to accommodate the needs of kids with disabilities. Governments must provide opportunities for people with disabilities to partake in cultural events and leisure pursuits like dancing and hiking. To engage them and give them access to new professional choices, courses like arts and crafts should be included. The law also guarantees all children with qualifying disabilities free education in suitable settings in neighborhood schools or special schools until they reach the age of majority. In addition to offering them a waiver for the admission tests for higher education institutions, all government higher education institutions and institutions of higher education should set aside at least 5 to 10% of seats for students with qualifying disabilities. Support to make content accessible to those who are impaired or disabled, it should be made available via audio, print, and electronic media.

ANALYSIS OF EMPLOYMENT FOR WOMEN WITH DISABILITY

Disabled persons especially women with disability have a tough time finding work since their impairment interferes with their capacity to perform. It is social and practical impediments, such as a lack of sufficient access to and around the workplace, a lack of education, masculine chauvinism, and employers' unwillingness to hire persons with disabilities that prohibit them from entering labour. The crippled women's socio-economic progress has been hampered by a lack of literacy and awareness. Approximately 20% of those polled acknowledged this harsh reality. Because there are few prospects for a productive job or meaningful employment for women with impairments, they are viewed as a heavier burden on the family. They are the world's most vulnerable group due to their forced financial dependency. Disabled women's rights take a lot of nurturing, support, positive discrimination, equal opportunity, and finally

empowerment and leadership. Numerous initiatives to better the conditions of women with disability. These were achieved by strictly enforcing compliance with the RPwD Act of 2016. By improving VRCs, assuring equal PwD participation in PRIs, and promoting job-oriented courses. Employment is a critical component of disability empowerment and inclusion. They continue to be disproportionately undereducated, untrained, unemployed, underemployed, and destitute, particularly women. Negative attitudes concerning disability further disadvantage women with disabilities. Women with impairments, like all handicapped people, are sometimes treated as if their disability has impaired all of their other talents. In the view of society, they are incapable of earning an income, let alone living freely.

SUPPORTED EMPLOYMENT SERVICES

The Supported Employment Services programme is a fantastic initiative for helping people with disabilities obtain and keep jobs in the open labour market. This concept provides people with impairments with a range of services. Supported employment can be increased through individual assignments, small work teams, mobile work crews, and small business agreements. These programmes have the potential to significantly improve the social and psychological well-being of people with disabilities. Cross-national comparisons are exceedingly challenging, and each country must select the approach that works best for them. Another great tactic that might be used more effectively, particularly for women with disabilities is to provide them with incentives from time to time with constant motivation, taking care of the employee's both physical and mental health. These prospective services may range from individual needs analyses through career planning, occupational profiling, and individual employment plans.

METHODS TO SPREAD AWARENESS

- **Advocacy:** Broadly advocacy is efforts made by individual persons or organisations to promote the rights and interests of the public at large, for example, people have equal access to health care, education, and employment or fighting discrimination and promoting the inclusion of marginalized groups in all the aspects of society. Advocacy is

something that can be done from the grass root level by each individual and can create a big impact in society.

- **The pathway from invisibility to Main Stream:** In today's world, do we see persons with disabilities in malls, markets, cinema halls, or any other public places? The answer is a clear no, this is simply because these places are inaccessible to them making them invisible from these mainstream places. The only pathway from Invisibility to Mainstreaming is the collaborative efforts of government, civil society organisations, and individuals.
- **Modes of Advocacy:** Lobbying and Policy Advocacy, Legal Action, Media and Public Education, Grassroots Organizing, Direct Support, Self-Advocacy & Collaboration, and Coalition Building.

CONCLUSION AND OPINION

There are several provisions and initiatives taken up by the government for persons with disabilities but in order to establish peace in a society where every person feels safe and secure there must be proper implementation of laws. It is essential to change the mindset of the world where PwD is kept on the same footing as others with reasonable accommodation, accessibility, and universal design in order to overcome the barriers they face. Awareness can play a major role in the upliftment, which can begin right from educational institutions like schools and colleges having capsule courses. Just like girls are taught about puberty and menstruation, they must also be taught about the rights of persons with disabilities.